IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7655 OF 2006

Shri Arjun Dnyneshwar Sawant ..Petitioner

Vs.

State of Maharashtra & Ors. ..Respondents

Mr.Ajay A.Joshi for the petitioner

CORAM : A.P.DESHPANDE, J

DATED : 1ST DECEMBER, 2006

P.C.:

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The petitioner purchased a vehicle in question which is popularly known as 'Luxury Bus' bearing no.MH 06/3706 from one Ganpat Laxman Babar on 4.12.99. On 9.11.00, the petitioner filed an application for transfer of the vehicle in his name before the Deputy R.T.O. Sangli. There were some proceedings in regard to execution of decree pending against the vendor of the petitioner filed

by the Co-operative Society wherein the executing court had passed an order of statusquo in regard to the transfer of vehicle on 26.4.01. Thereafter, it is the case of the petitioner that he appeared in the said execution proceeding and filed an application for vacation of statusquo order, as the purchase of the truck was much prior in point of time. On a representation made by the petitioner, the statusquo order came to be vacated and accordingly, the petitioner informed the fact to the RTO .

3. On 6.1.03, the petitioner moved an application for issuance of non use certificate in relation to the aforesaid vehicle for the period commencing from 1.7.01 to 31.7.05. It is an admitted position that the petitioner had moved the said application on 6.1.03 claiming 'non use' certificate for the vehicle. Thus, having regard to the provisions contained in section 3(2) of the Bombay Motor Vehicle Tax Rules 1959, the petitioner is prima facie liable for payment of tax for the period commencing from 1.7.01 till the date of filing of the application i.e. 6.1.03. The

application filed by the petitioner dt. 6.1.03 has not been decided on merits by the authorities but the same has been mainly rejected on two grounds. Firstly, that the application was belatedly filed and secondly, that one Sunanda Chavan has raised some objection to the same.

4. The learned counsel for the petitioner submits that the petitioner is ready and willing to pay the tax for the period commencing from 1.7.01 to 6.1.03 that may be determined by the R.T.O. Sangli. The learned counsel assures that within 2 weeks from the date of making of demand of the tax by R.T.O., the petitioner will deposit the same.

5. It is then contended that the claim for non use certificate for the period after 6.1.03 need to be considered and decide by the respondent no.2 in accordance with law, after verifying the fact in relation to the use or otherwise of the vehicle. Hence, the impugned order stands modified to the following extent.

6. R.T.O. shall find out the tax liability of

the petitioner in relation to the vehicle for the period commencing from 1.7.01 to 6.1.03 and make the demand from the petitioner. The petitioner shall pay the amount of tax for this period within a period of 4 weeks from the receipt of demand. On such deposit being made, the respondent no.2 shall consider the application made by the petitioner within 2 weeks claiming non use certificate for the period 6.1.03 to 31.7.05. The respondent no.2 shall decide the application moved by the petitioner after ascertaining relevant facts in regard to the user or otherwise of the vehicle for the period concerned in accordance with law. With this modification, writ petition is disposed of. Rule made absolute in above terms.

(SHRI A.P.DESHPANDE, J)